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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: DALLAS, TX Date: JUN 2 2004

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for knowingly encouraging, inducing, assisting, abetting, or aiding another alien to enter or try to enter the United States in violation of law. The applicant is married to a naturalized citizen of the United States and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside with his U.S. citizen wife and son.

The district director determined that the applicant was excludable without relief and denied the Form I-212 application accordingly. *Decision of the District Director*, dated November 4, 2002.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services] erred in denying the application. Counsel contends that the decision of the district director references a file number that may not be associated with the applicant; incorrectly references the whereabouts of the applicant and is based on 35-year-old precedent. *Form I-290B*, dated December 2, 2002. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (A) Certain aliens previously removed.-
>
> (i) Arriving aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
>
> (ii) [A]ny alien . . . who-
>
> (I) Has been ordered removed under section 240 or any other provision of law . . . is inadmissible.
>
> (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The record reflects that on March 20, 1980, the applicant was deported from the United States. On May 17, 1984, the applicant was convicted of transporting illegal aliens and was again removed from the United States on June 4, 1984. The applicant subsequently reentered the United States and applied for benefits from the former INS misrepresenting his history of immigration violations. On August 26, 2002, the applicant departed from the United States.

Although counsel contests precedent referred to by the district director, counsel fails to identify any error by the district director in evaluating the application according to precedent or the inapplicability of the cited precedent to the instant application. Counsel likewise fails to establish that misstatement of the applicant's file number in the previous decision resulted in any error.

The favorable factor in the application is the hardship imposed on the applicant's United States citizen wife and children by the applicant's inadmissibility to the United States. The AAO notes that the record makes no specific assertions of hardship. The applicant departed from the United States approximately two years ago.

The unfavorable factors in the application include the applicant's violation of section 212(a)(6)(E) of the Act for which waiver is not afforded. Further, the applicant illegally reentered the United States without permission after he was removed in 1984.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The district director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant has failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.